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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/513,020	02/25/2000	Kenneth B. Higgins	2159	7651

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 04/09/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/513,020

Applicant(s)

HIGGINS, KENNETH B.

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-7 is/are pending in the application.
- 4a) Of the above claim(s) 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 17.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Response to Amendment*

1. Amendment B, submitted as Paper No. 16 on February 7, 2003, has been entered. The specification and claims 3 and 4 have been amended as requested. The pending claims are 3-7 with claim 7 being withdrawn as non-elected.

### *Priority*

2. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior applications (the parent and/or original nonprovisional application or provisional application); the disclosure of the invention in the parent applications and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994). Therefore, said priority has not been granted and the amendment to the specification claiming such priority must be deleted.

3. At best, the present application might have status as a continuation-*in-part* of some of the prior applications which applicant has attempted to claim priority. However, it is noted that since said prior applications do not disclose the present inventive subject matter (i.e., amount of cup and curl), the effective filing date of instant application will not be the date(s) of said prior application(s). As such, applicant's argument with respect to the prior art rejection based upon

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US 5,540,968 which depends from 08/205,834 (Amendment, page 3, 5<sup>th</sup> paragraph) is unpersuasive.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 3-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. The phrase "good stability" in claim 3 is a relative phrase which renders the claim indefinite. The term "good" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

***Claim Rejections - 35 USC § 102/103***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3, 4, and 6 are rejected under 35 USC 102(b) as being anticipated by, or in the alternative, under 35 USC 103(a) as being unpatentable over US 5,540,968 issued to Higgins.

Applicant claims an adhesive free cushion backed carpet tile installation comprising a plurality of cushion backed carpet tiles comprising an upper textile surface and a lower layer of polyurethane foam. Each carpet tile is positioned in an abutting relationship and wherein each installed carpet tile has a cup of less than 3/16" and a curl of less than 1/16", preferably a cup of less than 2/16" and curl of less than 1/32". The tile has an overall thickness of about 0.20-0.55" and a foam layer thickness of about 0.10-0.25". The foam layer has a density of about 8-22 lb/ft<sup>3</sup>.

Higgins '968 discloses a cushion backed carpet tile comprising a primary carpet fabric, a reinforcement layer bonded to the primary carpet by an adhesive layer, a polyurethane cushion layer, and a heat fused nonwoven needlepunched backing layer (col. 2, lines 45-57). The polyurethane foam has a density of about 12-20 lb/ft<sup>3</sup> (col. 6, lines 35-39). Higgins '968 teaches the inventive nonwoven backing material eliminates curling without adverse cupping of the carpet tile (col. 2, lines 29-34 and col. 5, lines 40-53).

Although Higgins '968 does not explicitly state the amount of cup or curl, it is asserted that the teaching of 'eliminating curling without adverse cupping' anticipates the present claim limitations. Additionally, although Higgins '968 does not explicitly teach the carpet tiles are "adhesive free," it is asserted that the Higgins '968 teaching of a carpet tile with a smooth contact surface for positioning by sliding on the floor as an alternative to adhesive backed tiles (col. 1, lines 59-67 and col. 2, lines 35-39) inherently encompasses "adhesive free" carpet tiles.

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The burden is upon applicant to prove otherwise. In the alternative, the presently claimed cup, curl, and adhesive free properties would obviously have been present once the Higgins '968 invention is provided. Therefore, claims 3, 4, and 6 are anticipated by or obvious over the cited Higgins '968 patent.

### ***Claim Rejections - 35 USC § 103***

10. Claim 5 is rejected under 35 USC 103(a) as being unpatentable over the cited Higgins '968 patent in view of Higgins US 4,522,857.

Higgins '968 is silent with respect to the thickness of the foam layer and the overall thickness. But, Higgins '968 does teach the nonwoven backing layer has a thickness of 0.03-.07" (col. 5, lines 20-23) and incorporates by reference Higgins '857 as teaching similar prior art carpet tiles (col. 1, lines 22-25). Higgins '857 teaches a carpet tile having a foam thickness of 0.1-1.0" (col. 2, lines 1-2). Higgins '857 also teaches the pile has a thickness of 1/8-1", the adhesive bonding layer has a thickness of 0.010-0.070", the foam layer has a thickness of 0.1-1.0", and a foam carrier backing has a thickness of 0.01-0.04" (col. 1, lines 34-35, 48-49, and 63-64). This gives an overall thickness of about 0.275-2.18". Thus, it would have been obvious for one skilled in the art to produce the Higgins '968 carpet tile with the thicknesses taught by Higgins '857 with the expectation of achieving a quality cushion backed carpet tile. Therefore, claim 5 is rejected as being obvious over the cited prior art.

### ***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the

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Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL JUSKA  
PRIM/SEC EXAMINER